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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 29 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after deportation or removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to procure admission into the United States on September 12, 1999 at the San Ysidro, California port of entry. Citizenship and Immigration Services records reveal that he was removed from the United States pursuant to section 235(b)(1) of the Act. The record reflects that the applicant was present in the United States without a lawful admission or parole two to three weeks after removal and without permission to reapply for admission in violation of § 276 of Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to remain in the United States.

The director determined that sections 212(a)(6)(C)(ii) and 212(a)(9)(C) of the Act apply in this matter and the applicant is not eligible and may not apply for any relief. The Director then denied the application accordingly. *See Director Decision* dated June 27, 2003.

On appeal, counsel asserts that the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act, was for having falsely represented himself as a citizen of the United States was never proven and therefore he should not be inadmissible under that section of law. Counsel however, does not deny the applicant's removal from the United States.

In the present case, a review of the record does not reflects any documentation to substantiate the director's finding of the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act. The only place that this inadmissibility is mentioned is in the Central Index System (CIS) computer record. There is nothing in the applicant's alien file to support a false claim to a U.S. citizenship. Absent supporting documentation, the AAO is unable to confirm the director's conclusion that that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. However, as discussed below, the appeal will be dismissed on other grounds.

Section 212(a)(9) states in pertinent part: Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was

> outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.
>
> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the aliens' reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

The record clearly reflects that the applicant was removed to Mexico on September 12, 1999 and reentered illegally two to three weeks after his removal. The AAO finds that the applicant has never been granted permission to reapply for admission and therefore he is subject to the provision of section 241(a)(5) of the Act which states:

> (5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.